

REMARKS

By this amendment, the independent apparatus and method claims 1 and 10 have been amended to further specify the multiple fibers to for simultaneous extraction of multiple analytes. Support for these amendments is found in our Specification, for example, at page 7, lines 25-26 and at page 10, lines 21-22.

Claims 1 and 10 have been further amended to include the shield means of claims 5 and 25, and to specify the tight fit between the fibers and the shield as clearly illustrated in figure 3. The Examiner is thanked for suggesting this wording in the telephone Interview of 18 December.

Turning to the outstanding issues in the action, Claim 15 was objected to, since it is a duplicate of Claim 13. Claim 15 has been canceled to address this issue.

Claims 1, 5, 7-10 and 13-32 were rejected under 35 U.S.C. 103(a), as being unpatentable over Koehler in view of Murphy.

In her construction of Koehler et al, the Examiner now relies on the disclosure at column 1, lines 10-12.

It is respectfully submitted that this is no more than another general mention in the introductory portion of the Disclosure, which clearly does not constitute an "enabling disclosure" of our claimed element of a "solid support in the form of multiple fibres". Further, there is no teaching or suggestion of the use of multiple fibres for simultaneous extraction of multiple analytes, which is now specified in amended Claims 1 and 10. It is well established in the jurisprudence that a prior art reference must enable what it discloses. Clearly, there is no teaching or suggestion in the reference of how to make or how to use multiple fibers for simultaneous extraction of multiple analytes,

which are typical tests for enablement. The Examiner is also invited to review our previous Response for a more detailed rebuttal of this issue.

The Examiner then states that (in the reference) desorption is accomplished by inserting the needle in the inlet of and instrument and desorbing. Clearly, the reference only contemplates desorption by heating. See column 6, lines 48-50.

The Examiner then admits that Koehler fails to teach extraction into a microvolume of solvent. This is an admission that our claimed element of "means located outside of the enclosure means for chemically desorbing the target analytes by solvent extraction by a microvolume of solvent" is not found in the reference.

The Examiner continued by alleging that Murphy teaches a "device similar to Koehler", apparently including what the Examiner perceives to be the pieces missing from Koehler, which when combined with Koehler, result in our claimed invention ie to establish a prima facie case of Obviousness. Those pieces appear to include chemical desorption by a microvolume of solvent.

It is submitted that the Examiner's use of the term "similar" is very much of a stretch, and well beyond reasonableness, and accordingly must be considered as non-analogous prior art.. Most significantly, Murphy does not even employ a sampling means in the form of a fiber or fibers. The Examiner is also invited to review the more detailed rebuttal of this issue in our previous Response.

The Examiner further alleges that the "needle" disclosed in the Koehler reference constitutes our means for shielding. This is clearly incorrect. Although some protection of the fiber e.g against mechanical shock would be provided by Koehler's needle, it is not a means for shielding the fiber from the atmosphere, such that....and the extracted analytes are shielded from

volatizing into the atmosphere . Note that this is now specified in Claims 1 and 10.

More specifically, as seen in figure 2A of the reference, because the needle 44 has a larger inner diameter than the outer diameter of the metal casing 57 which retains the fiber, when the fiber/casing assembly is drawn up inside the needle, there clearly is an airspace between the inner diameter of the needle and the outer diameter of the fiber. That is, in the withdrawn position, the fiber is accessible to the atmosphere by the open end of the needle.

Accordingly, this is not a means for shielding the fibers from the atmosphere. Moreover, there is no mention anywhere in the reference Specification of shielding the fibers from the atmosphere to prevent the analytes from volatizing into the atmosphere.

The Examiner also failed to comment upon the subject matter of our claim 24, which covers the archiving of samples, which is not found in any of the references of record. See our Specification, for example, at page 7, line 27 to page 8, line 2. It is emphasized that archiving can only be done if solvent extraction is used. Clearly, only in hindsight with the benefit of our Disclosure, would archiving be contemplated.

Accordingly, it is submitted that the rejection of Claims 1, 5, 7-10 and 13-32 under 35 U.S.C. 103(a), as being unpatentable over Koehler in view of Murphy, be withdrawn.

The Examiner also rejected Claim 23 under 35 U.S.C. 103(a), as being unpatentable over Koehler and Murphy as applied to Claims 1, 5, 7-10 and 13-32, and further in view of Pawliszyn(,206).

Since Claim 23 is dependent upon claim 20, and indirectly upon amended claim 1, which for the reasons stated above should be patentable, at the very least, claim 23 will stand or fall with claim 1.